

**2005 DRAFTING REQUEST**

**Bill**

Received: **09/27/2004**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Milioto**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - long-term care**  
**Health - medical assistance**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

---

**Pre Topic:**

DOA:.....Milioto, BB0018 -

---

**Topic:**

Community opportunities and recovery waiver

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/19/2004	kfollett 10/20/2004	jfrantze 10/21/2004	_____	mbarman 10/21/2004		S&L
/1	dkennedy 11/19/2004	kfollett 11/21/2004	rschluet 11/22/2004	_____	lemery 11/22/2004		S&L
/2	dkennedy 11/23/2004	jdyer 11/24/2004	rschluet 11/24/2004	_____	lnorthro 11/24/2004		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	dkennedy 12/09/2004	kfollett 12/10/2004	rschluet 12/10/2004	_____	sbasford 12/10/2004		

FE Sent For:

<END>

## 2005 DRAFTING REQUEST

### Bill

Received: **09/27/2004**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Milioto**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - long-term care**  
**Health - medical assistance**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

---

### Pre Topic:

DOA:.....Milioto, BB0018 -

---

### Topic:

Community opportunities and recovery waiver

---

### Instructions:

See Attached

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/19/2004	kfollett 10/20/2004	jfrantze 10/21/2004	_____	mbarman 10/21/2004		S&L
/1	dkennedy 11/19/2004	kfollett 11/21/2004	rschluet 11/22/2004	_____	lemery 11/22/2004		S&L

13/10  
12/10

12/10  
4/10

***LRB-0311***

11/24/2004 10:28:49 AM

Page 2

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	dkennedy 11/23/2004	jdyer 11/24/2004	rschluet 11/24/2004	_____	lnorthro 11/24/2004		

FE Sent For:

<END>

**2005 DRAFTING REQUEST**

**Bill**

Received: **09/27/2004**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Milioto**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - long-term care**  
**Health - medical assistance**

Extra Copies:

Submit via email: **NO**

---

**Pre Topic:**

DOA:.....Milioto, BB0018 -

---

**Topic:**

Community opportunities and recovery waiver

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/19/2004	kfollett 10/20/2004	jfrantze 10/21/2004		mbarman 10/21/2004		S&L
/1	dkennedy 11/19/2004	kfollett 11/21/2004	rschluet 11/22/2004		lemery 11/22/2004		

FE Sent For:

1/2 11/23 JLD  
11 24 5/16  
<END>

## **2005 DRAFTING REQUEST**

### **Bill**

Received: **09/27/2004**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Milioto**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - long-term care**  
**Health - medical assistance**

Extra Copies:

**DAK**

Submit via email: **NO**

---

### **Pre Topic:**

DOA:.....Milioto, BB0018 -

---

### **Topic:**

Community opportunities and recovery waiver

---

### **Instructions:**

See Attached

---

### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/19/2004	kfollett 10/20/2004	jfrantze 10/21/2004		mbarman 10/21/2004		

FE Sent For:

**<END>**

**2005 DRAFTING REQUEST**

**Bill**

Received: **09/27/2004**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Milioto**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - long-term care**  
**Health - medical assistance**

Extra Copies: **DAK**

Submit via email: **NO**

---

**Pre Topic:**

DOA:.....Milioto, BB0018 -

---

**Topic:**

Community Opportunities and Recovery Waiver *Done*

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	rryan	1 P1 K/ 10/20	10/20	<i>J/Rs</i> 10/21			

FE Sent For:

<END>

**2003-05 Budget Bill Statutory Language Drafting Request**

- Topic: Community Opportunities and Recovery Waiver
- Tracking Code:
- SBO team: Health and Insurance
- SBO analyst: Steve Milioto
  - Phone: 266-8593
  - Email: [steve.milioto@doa.state.wi.us](mailto:steve.milioto@doa.state.wi.us)
- Agency acronym: DHFS
- Agency number: 435



# DHFS

---

**Department of Health and Family Services**  
**2005-2007 Biennial Budget Statutory Language Request**  
September 21, 2004

**Community Opportunities and Recovery Waiver**  
**(Nursing Home Relocation Waiver for Persons with Serious Mental Illness)**

**Current Language**

None.

**Proposed Change**

The Department proposes to create a new Medical Assistance waiver referred to as the Community Opportunities and Recovery (COR) waiver for individuals who have co-occurring mental health and physical health conditions. Suggested statutory language is attached.

**Effect of the Change**

The goal of the waiver is to relocate residents of nursing homes who have co-occurring mental health and physical health conditions into the community. This new waiver will include a package of recovery-oriented services and case management supports appropriate for this target population.

A new 1915(c) Home and Community-Based Waiver, structured to meet the special needs of these individuals special needs, will provide the help needed to allow them the choice of living in the community.

An array of services will become available that are not currently available under the State Medicaid plan or by Wisconsin's existing home and community-based waivers.

This new waiver will provide the community-based supports that better meet the Americans with Disabilities Act Title II goal, as applied in the Supreme Court *Olmstead* decision, which requires states to provide mental health treatment and long-term supports in the most integrated and least restrictive setting.

**Rationale for the Change**

Many of these individuals would prefer to receive more appropriate treatment for their mental illness and physical health care in a community setting that specializes in their treatment needs.

In general, many of these individuals can be served in the community at the same or lower cost.

Wisconsin's current Medicaid long-term care waiver focuses on people with long-term care needs and not on the combination of mental health and personal care needs. Missing from these waivers are the community mental health supports that can assist these individuals with their goal of integration and recovery.

<b>Desired Effective Date:</b>	July 1, 2005 or Passage of the Budget Bill
<b>Agency:</b>	DHFS
<b>Agency Contact:</b>	Donna Dunkel
<b>Phone:</b>	266-8156

## Ryan, Robin

---

**From:** Dunkel, Donna  
**Sent:** Tuesday, October 05, 2004 8:29 AM  
**To:** Ryan, Robin  
**Subject:** Re: Community Opportunities and Recovery Waiver budget request



Community  
pportunities and Re

Hi Robin,

Sorry for the delay, I was out for a couple of days. The suggested language is on the third page of the attached.

Donna

>>> "Ryan, Robin" <Robin.Ryan@legis.state.wi.us> 10/04/04 12:48PM >>>  
Hi Donna,

The budget request for the Community Opportunities and Recovery Waiver says that there is suggested statutory language attached. I don't have a copy of the suggested language. If it is something that DHFS wants me to work off, could you send a copy?

Thanks

Robin Ryan  
Legislative Reference Bureau

**DHFS Language Recommendations**  
**[used s. 46.27(11) Medical Assistance Waiver as model]**

46.xxx Medical Assistance Waiver for Individuals with Mental Health Needs

✓ In this sub-section individuals with mental illness will be defined as having a condition which meets the definition in 42CFR 483.102 (b) (1).

*services* Such necessary long-term community support services as defined in the waiver application to the federal department of health and human services include, but are not limited to, residential care, home care supports, therapeutic supports and case management. *CBRT ok?*

✓ The department shall include all assurances required under 42 USC 1396n (c) in the implementation of the waiver. *or request?*

The following conditions apply under the waiver:

- ✓ • At the end of the period during which the waiver remains in effect the department may request an extension of the waiver.
- ✓ • Medical assistance reimbursement for services a county, a private nonprofit agency or an aging unit with which the department contracts provides under this subsection shall be made from the appropriations under s. 20.435 (4) (b) and (4) (o).
- ✓ • The department may, from the appropriation under s. 20.435 (4) (o), provide reimbursement for services provided under this subsection by counties that are in excess of the current average annual per person rate, as established by the department, and are less than or equal to the average amount approved in the waiver received under par. (b).
- ✓ • The department may contract for services under this subsection with a county, a private nonprofit agency or, if a county board of supervisors by resolution so requests the department, an aging unit. *relevant for COP-waiver, but probably not for this waiver*

**Suggest this be included as non-statutory language:**

✓ The department may request a waiver from the secretary of the federal department of health and human services, under 42 USC 1396n(c) authorizing the department to provide as part of the medical assistance program home and community based waiver services for individuals who have a mental illness and are eligible for long-term supports and services in a community setting.

## Ryan, Robin

From: Milioto, Steve  
Sent: Monday, October 11, 2004 9:59 AM  
To: Ryan, Robin  
Subject: FW: FW: Community Opportunities and Recovery Waiver

FYI

-----Original Message-----

From: Dunkel, Donna  
Sent: Monday, October 11, 2004 8:31 AM  
To: Milioto, Steve  
Cc: Daggett, Cynthia  
Subject: Re: FW: Community Opportunities and Recovery Waiver

Steve,  
Below are the responses to Robin's questions.  
Donna

\*\*\*\*\*  
\*\*\*\*\*

1. Do people have to be in a nursing home (or some other institution, and if so, what type of institution) to be eligible for the Community Opportunities and Recovery Program, or are they also eligible if they meet a certain care threshold, and if so what care threshold?

Response:

An individual eligible for COR must be a resident of a nursing home. Under federal medicaid language more accurately than nursing home, we mean a Medicaid-certified nursing facility which is not a State-licensed only or Medicare-only nursing home, not an ICF-MR, not a Hospital and not an IMD. This is only a relocation and not a diversion waiver application initially, but after implementation and review of outcomes, the decision to expand eligibility to persons in the community who are otherwise eligible is an option.

*ie. must meet reg's. of 42 USC 1396?*

*Int. for mental diseases (ie. as NH but NH doesn't cover)*

*ie doesn't take MA recipients  
- if is medicaid only - wouldn't have MA recipients anyway*

*licensed as a NH*

2. Can you give me more specifics on what type of physical condition a person must have to be eligible for COR?

Response:

Individuals who meet eligibility for COR due to a documented mental illness which is severe, chronic and pervasive must also be eligible as determined by a standard Functional Assessment. This assessment rates the severity of need in activities of daily living, types and frequency of service and support. Physical disorders which impact the individual's ability to care for themselves without support may include (but is not limited to) diabetes, disorders of the heart and blood vessels, hypertension, multiple sclerosis, arthritis, stroke, asthma, kidney disease, liver disease, hyperthyroidism or hypothyroidism. Irrespective of the mental health, medical and/or physical diagnosed conditions, functionally the individual must meet a level of need or impaired function which would typically result in care within a nursing facility.

*threshold of care requirement*

*Use physical elig. standard for COP-Waiver? 42.27(c)(a)*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0311/P1dn

RLR: *[Signature]*

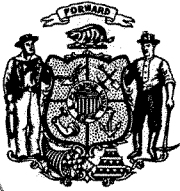
*Date*

Steve Milioto:

I do not know how many details of the Community Opportunities and Recovery Program DHFS wants in the statutes. I therefore inserted notes asking whether DHFS wants to include certain language that is in the statutes for the other MA home and community-based waiver programs. Many of my questions relate to federal requirements. The state must follow the federal requirements regardless of whether they are reiterated in the state statutes, but it may be beneficial to assign responsibility in the state statutes for complying with the various federal requirements.

Should I add cross-references to the Community Opportunities and Recovery Program in ss. 49.46 (1) (a) 14. *[initials]* and 49.47 (4) (as) 1. and 3. so that a person who would meet the eligibility requirements for MA but for engaging in substantial gainful activity may be eligible for the Community Opportunities and Recovery Program? *X*

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-03117

RLR:LC

P1

In 10/19/04  
Wanted by 10/25

RMR

DOA:.....Milioto, BB0018 - Community Opportunities and Recovery Waiver

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

UPS:  
Fix  
request  
sheet  
pls  
Done

Do Not Gen

D-Note

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 46.10 (16) of the statutes is amended to read:  
3 46.10 (16) The department shall delegate to county departments under ss.  
4 51.42 and 51.437 or the local providers of care and services meeting the standards  
5 established by the department under s. 46.036, the responsibilities vested in the  
6 department under this section for collection of patient fees for services other than  
7 those provided at state facilities or those provided to children that are reimbursed  
8 under a waiver under s. 46.27 (11), 46.275, ~~or~~, 46.278, or 46.2785 or a waiver  
9 requested under 2001 Wisconsin Act 16, section 9123 (16rs), or 2003 Wisconsin Act

33, section 9124 (8c), if the county departments or providers meet the conditions that the department determines are appropriate. The department may delegate to county departments under ss. 51.42 and 51.437 the responsibilities vested in the department under this section for collection of patient fees for services provided at the state facilities if the necessary conditions are met.

**History:** 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (i), (n); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27, 35, 237, 308; 1999 a. 9, 103; 2001 a. 16, 59, 103; 2003 a. 33.

**SECTION 2.** 46.27 (5) (i) of the statutes is amended to read:

46.27 (5) (i) In the instances in which an individual who is provided long-term community support services under par. (b) for which the individual receives direct funding, serve directly as a fiscal agent or contract with a fiscal intermediary to serve as a fiscal agent for that individual for the purposes of performing the responsibilities and protecting the interests of the individual under the unemployment insurance law. The county department or aging unit may elect to act as a fiscal agent or contract with a fiscal intermediary to serve as a fiscal agent for an individual who is provided long-term support services under s. 46.275, 46.277, 46.278, 46.2785, 46.495, 51.42, or 51.437. The fiscal agent under this paragraph is responsible for remitting any federal unemployment compensation taxes or state unemployment insurance contributions owed by the individual, including any interest and penalties which are owed by the individual; for serving as the representative of the individual in any investigation, meeting, hearing or appeal involving ch. 108 or the federal unemployment tax act (26 USC 3301 to 3311) in which the individual is a party; and for receiving, reviewing, completing and returning all forms, reports and other documents required under ch. 108 or the federal unemployment tax act on behalf of the individual. An individual may make an informed, knowing and voluntary



1 election to waive the right to a fiscal agent. The waiver may be as to all or any portion  
2 of the fiscal agent's responsibilities. The waiver may be rescinded in whole or in part  
3 at any time.

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33.

4 **SECTION 3. 46.27 (6r) (a) of the statutes is amended to read:**

5 46.27 (6r) (a) A person who is initially eligible for services under sub. (7) (b),  
6 for whom home and community-based services are available under sub. (11) or s.  
7 46.275, 46.277 ~~or~~, 46.278, or 46.2785 that require less total expenditure of state funds  
8 than do comparable services under sub. (7) (b) and who is eligible for and offered the  
9 home and community-based services under sub. (11) or s. 46.275, 46.277 ~~or~~, 46.278,  
10 or 46.2785, but who declines the offer, except that a county may use funds received  
11 under sub. (7) (b) to pay for long-term community support services for the person for  
12 a period of up to 90 days during which an application for services under sub. (11) or  
13 s. 46.275, 46.277 ~~or~~, 46.278, or 46.2785 for the person is processed.

\*\*\*\*NOTE: Should eligibility for the Community Opportunities and Recovery Program make a person ineligible for COP?

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33.

14 **SECTION 4. 46.2785 of the statutes is created to read:**

15 **46.2785 Community Opportunities and Recovery Program. (1)**

16 **DEFINITIONS.** In this section:

17 (a) "Nursing facility" has the meaning given in 42 USC 1396r (a).

18 (b) "Physically disabled" has the meaning given in s. 46.27 (11) (a).

\*\*\*\*NOTE: Is this definition of "physically disabled" consistent with the intent of DHFS?

19 (c) "Serious mental illness" has the meaning given in 42 CFR 483.102 (b) (1).

1 (d) "Waiver program" means the Community Opportunities and Recovery  
2 Program for which a waiver has been requested under sub. (2) and granted under 42  
3 USC 1396n (c).

4 (2) WAIVER REQUEST. The department may request a waiver from the secretary  
5 of the U.S. department of health and human services, under 42 USC 1396n (c),  
6 authorizing the department to serve in their communities medical assistance  
7 recipients who are physically disabled and have a serious mental illness by providing  
8 them home or community-based services as part of the medical assistance program. X  
9 If the department requests a waiver, it shall include all the assurances required  
10 under 42 USC 1396n (c) (2) in the request. If the department receives a waiver, it  
11 may request an extension of the waiver under 42 USC 1396n (c).

12 (3) DEPARTMENTAL DUTIES. If the department receives a waiver under this  
13 program, it shall do all of the following:

14 (a) Fund the provision of home or community-based services that meet the  
15 requirements of this section.

16 (b) Establish an average annual per person rate of reimbursement to counties  
17 or agencies that participate in the waiver program.

18 (c) Unless a waiver is obtained under s. 49.45 (37), review and approve or  
19 disapprove each plan of care developed under sub. (4).

\*\*\*\*NOTE: Does DHFS want to specify any other departmental duties, for example,  
annual reporting to the U.S. Dept. of Health and Human Services? X

20 (4) COUNTY PARTICIPATION. (a) Any county may participate in the waiver  
21 program if it meets the conditions specified in this subsection and any requirements  
22 specified by the department.

\*\*\*\*NOTE: I assumed that the waiver program will be open to all counties. Should  
DHFS be able to contract with a private agency to serve the residents of a county, even  
if the county wants to administer the waiver program? (i.e., how should I reconcile this

subsection and sub. (5)?) Does DHFS want to specify which types of county agencies may administer the waiver program, as in s. 46.275 (3) (a)?

1 (b) A county participating in the waiver program shall develop a plan of care  
2 for each participant in the waiver program and shall provide each participant home  
3 and community-based services that are consistent with the participant's plan of  
4 care.

\*\*\*\*NOTE: Should the bill specify any particular services such as case management or "recovery services" that a county must provide or will DHFS specify the required services absent statutory language?

5 (c) A county participating in the waiver program shall inform persons eligible  
6 under sub. (6) that home and community-based services are available, at their  
7 choosing, instead of care in a nursing facility.

\*\*\*\*NOTE: Should reductions in nursing home bed utilization as a result of the waiver result in delicensing of beds, and if so, should the bill require that counties submit a plan for delicensing as under s. 46.277 (3) (b)?

8 (5) CONTRACT FOR SERVICES. The department may contract with a county or a  
9 private nonprofit agency to provide services under the waiver program. A private  
10 nonprofit agency with which the department contracts shall have the powers and  
11 duties of a county under this section.

\*\*\*\*NOTE: The language proposed by DHFS, which is modelled on the COP-Waiver language, provides that DHFS may contract with a county, a private nonprofit agency, or an aging unit. This bill does not use the COP-Waiver definition of private nonprofit agency under s. 46.27 (1) (bm). Does the department want to limit the type of private nonprofit agency with which the department may contract? Also, the bill does not provide for DHFS to contract with an aging unit, because an aging does not seem the appropriate county department to serve people who are mentally ill and developmentally disabled. Please let me know if the bill should allow DHFS to contract with an aging unit. unit

12 (6) ELIGIBILITY. Any medical assistance recipient who is physically disabled,  
13 has a serious mental illness, is living in a nursing facility, and meets the level of care  
14 requirements under s. 49.45 (6m) (i) for reimbursement of nursing home care under  
15 the medical assistance program is eligible to participate in the waiver program. X

\*\*\*\*NOTE: Does DHFS want to specify that either the MA recipient or a person acting on his or her behalf may apply for participation in the program, as in s. 46.275 (4) (a)?

\*\*\*\*NOTE: Does DHFS want to include a provision on who reviews applications, and the standards for review as in s. 46.275 (4)(b)?

\*\*\*\*NOTE: Will the number of waiver slots be capped statewide, and if so, does DHFS want language stating that a county may fill a slot, when a participant leaves the waiver program, as in s. 46.277 (4)(b)?

(7) FUNDING. (a) Medical assistance reimbursement for services a county or private nonprofit agency provides under the waiver program shall be made from the appropriation accounts under s. 20.435 (4) (b) and (o).

(b) The department may, from the appropriation account under s. 20.435 (4) (o), reimburse a county or private agency for providing services that cost more than the average annual per person rate established by the department, but less than the average amount approved by the federal government for the waiver program.

\*\*\*\*NOTE: Does DHFS want to include restrictions on the use of waiver funding? For example, may waiver funding be used to pay for placement at a CBRF? Should any of the restrictions under s. 46.275 (5) (b) apply?

\*\*\*\*NOTE: Does DHFS want to limit total funding to the counties for the waiver program to the amount approved by the federal government, as in s. 46.275 (5)(c)?

(8) EFFECTIVE PERIOD. Except as provided under sub. (2), this section takes effect on the date approved by the secretary of the U.S. department of health and human services as the beginning date of the period of the waiver received under sub. (2). This section remains in effect for 3 years following that date and, if the secretary of the U.S. department of health and human services approves a waiver extension under 42 USC 1396n (c), for the duration of the extension.

History: 2003 a. 52, 320.

**SECTION 5.** 46.286 (1) (a) 2. b. of the statutes is amended to read:

46.286 (1) (a) 2. b. Home and community-based waiver programs under 42 USC 1396n (c), including ~~community integration program~~ Community Integration Program under s. 46.275, 46.277, <sup>score</sup> or 46.278 and the Community Opportunities and Recovery Program under s. 46.2785.

History: 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33.

\*\*\*\*NOTE: Should participation in the Community Opportunities and Recovery Program create entitlement to the Family Care benefit if Family Care is introduced in additional counties?

1       **SECTION 6.** 46.985 (2) (a) 4. of the statutes is amended to read:

2       46.985 (2) (a) 4. Procedures for coordinating the family support program and  
3       the use of its funds, throughout this state and in each service area, with other  
4       publicly funded programs including the community options program under s. 46.27;  
5       the ~~community integration program~~ Community Integration Program under ss.  
6       46.275, 46.277, and 46.278; the Community Opportunity and Recovery Program  
7       under s. 46.2785; the social services, mental health, and developmental disabilities  
8       programs under ss. 46.495, 51.42, and 51.437; the independent living center program  
9       under s. 46.96; and the ~~medical assistance~~ Medical Assistance program under subch. IV of ch. 49.

History: 1985 a. 29, 120, 176; 1985 a. 182 s. 57; 1987 a. 27, 186; 1989 a. 31; 1993 a. 27, 446; 1995 a. 27; 1997 a. 27; 2001 a. 16.

10       **SECTION 7.** 49.46 (2) (b) 8. of the statutes is amended to read:

11       49.46 (2) (b) 8. Home or community-based services, if provided under s. 46.27  
12       (11), 46.275, 46.277 ~~or~~, 46.278, or 46.2785, under the family care benefit if a waiver  
13       is in effect under s. 46.281 (1) (c), or under a waiver requested under 2001 Wisconsin  
14       Act 16, section 9123 (16rs), or 2003 Wisconsin Act 33, section 9124 (8c).

History: 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss. 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 245 ss. 10, 15; 1983 a. 538; 1985 a. 29, 120, 176, 253; 1987 a. 27, 307, 339, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1454d to 1460 and 2909g, 2909i; 1989 a. 122, 173, 333, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 99, 269, 277, 446, 450, 491; 1995 a. 27, 77, 164, 289, 303, 457; 1997 a. 27, 35, 105, 237; 1999 a. 9; 2001 a. 16; 2003 a. 33.

15       **SECTION 8.** 108.02 (13) (k) of the statutes is amended to read:

16       108.02 (13) (k) "Employer" does not include a county department or aging unit  
17       that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal  
18       agent under s. 46.27 (5) (i) or 47.035 as to any individual performing services for a  
19       person receiving long-term support services under s. 46.27 (5) (b), 46.275, 46.277,

1 46.278, <sup>✓</sup>~~46.2785~~, 46.495, 51.42, or 51.437 or personal assistance services under s.

2 47.02 (6) (c).

**History:** 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197.

3 (END)

D-Note

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0311/P1dn  
RLR:kjf:jf

October 21, 2004

Steve Milioto:

I do not know how many details of the Community Opportunities and Recovery Program DHFS wants in the statutes. I therefore inserted notes asking whether DHFS wants to include certain language that is in the statutes for the other MA home and community-based waiver programs. Many of my questions relate to federal requirements. The state must follow the federal requirements regardless of whether they are reiterated in the state statutes, but it may be beneficial to assign responsibility in the state statutes for complying with the various federal requirements.

Should I add cross-references to the Community Opportunities and Recovery Program in ss. 49.46 (1) (a) 14. and 49.47 (4) (as) 1. and 3. so that a person who would meet the eligibility requirements for MA but for engaging in substantial gainful activity may be eligible for the Community Opportunities and Recovery Program?

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

## Kennedy, Debora

---

**From:** Milioto, Steve  
**Sent:** Thursday, November 11, 2004 2:07 PM  
**To:** Kennedy, Debora  
**Subject:** FW: COR Waiver Language



05-0311P1dn.doc



MA HCB wvr CMI -  
CO.doc

Hi Deborah --

In Robin's absence, I am forwarding this to you. Robin had posed a number of questions to the department and I sending them along to you. Please let me know if you have any questions or if you would like me to follow-up with the department about anything. Best, Steve

-----Original Message-----

**From:** Dunkel, Donna  
**Sent:** Thursday, November 11, 2004 8:25 AM  
**To:** Milioto, Steve  
**Cc:** Allen, Joyce; Blessinger, Elizabeth; Jones, Charles; Lofton, Cheryl; Zimmerman, Daniel; Bove, Fredi-Ellen; Daggett, Cynthia; Gebhart, Neil  
**Subject:** COR Waiver Language

Steve,

Attached are DHFS' revisions and comments to the Community Opportunities and Recovery Waiver language. Also attached is statutory language for a similar waiver program in Colorado that is being used for justification to repeal current language.

Please feel free to call (6-8156) or e-mail with questions.

Donna



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

October 21, 2004

Steve Milioto:

I do not know how many details of the Community Opportunities and Recovery Program DHFS wants in the statutes. I therefore inserted notes asking whether DHFS wants to include certain language that is in the statutes for the other MA home and community-based waiver programs. Many of my questions relate to federal requirements. The state must follow the federal requirements regardless of whether they are reiterated in the state statutes, but it may be beneficial to assign responsibility in the state statutes for complying with the various federal requirements.

Should I add cross-references to the Community Opportunities and Recovery Program in ss. 49.46 (1) (a) 14. and 49.47 (4) (as) 1. and 3. so that a person who would meet the eligibility requirements for MA but for engaging in substantial gainful activity may be eligible for the Community Opportunities and Recovery Program?

**DHFS Response:** *Yes, please make the cross references.*

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

2005 – 2006 LEGISLATURE

DOA:.....Milioto, BB0018 – Community opportunities and recovery waiver  
FOR 2005–07 BUDGET -- NOT READY FOR INTRODUCTION

1     **AN ACT** ...; relating to: the budget.

---

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2     **SECTION 1.** 46.10 (16) of the statutes is amended to read:

3     46.10 **(16)** The department shall delegate to county departments under ss.  
4     51.42 and 51.437 or the local providers of care and services meeting the standards  
5     established by the department under s. 46.036, the responsibilities vested in the  
6     department under this section for collection of patient fees for services other than  
7     those provided at state facilities or those provided to children that are reimbursed  
8     under a waiver under s. 46.27 (11), 46.275, ~~or~~ 46.278, or 46.2785 or a waiver  
9     requested under 2001 Wisconsin Act 16, section 9123 (16rs), or 2003 Wisconsin Act

1 33, section 9124 (8c), if the county departments or providers meet the conditions that  
2 the department determines are appropriate. The department may delegate to  
3 county departments under ss. 51.42 and 51.437 the responsibilities vested in the  
4 department under this section for collection of patient fees for services provided at  
5 the state facilities if the necessary conditions are met.

6 **SECTION 2.** 46.27 (5) (i) of the statutes is amended to read:

7 46.27 (5) (i) In the instances in which an individual who is provided long-term  
8 community support services under par. (b) for which the individual receives direct  
9 funding, serve directly as a fiscal agent or contract with a fiscal intermediary to serve  
10 as a fiscal agent for that individual for the purposes of performing the responsibilities  
11 and protecting the interests of the individual under the unemployment insurance  
12 law. The county department or aging unit may elect to act as a fiscal agent or contract  
13 with a fiscal intermediary to serve as a fiscal agent for an individual who is provided  
14 long-term support services under s. 46.275, 46.277, 46.278, 46.2785, 46.495, 51.42,  
15 or 51.437. The fiscal agent under this paragraph is responsible for remitting any  
16 federal unemployment compensation taxes or state unemployment insurance  
17 contributions owed by the individual, including any interest and penalties which are  
18 owed by the individual; for serving as the representative of the individual in any  
19 investigation, meeting, hearing or appeal involving ch. 108 or the federal  
20 unemployment tax act (26 USC 3301 to 3311) in which the individual is a party; and  
21 for receiving, reviewing, completing and returning all forms, reports and other  
22 documents required under ch. 108 or the federal unemployment tax act on behalf of  
23 the individual. An individual may make an informed, knowing and voluntary  
24 election to waive the right to a fiscal agent. The waiver may be as to all or any portion

1 of the fiscal agent's responsibilities. The waiver may be rescinded in whole or in part  
2 at any time.

3 **SECTION 3.** 46.27 (6r) (a) of the statutes is amended to read:

4 46.27 (6r) (a) A person who is initially eligible for services under sub. (7) (b),  
5 for whom home and community-based services are available under sub. (11) or s.  
6 46.275, 46.277 ~~or~~, 46.278, or 46.2785 that require less total expenditure of state funds  
7 than do comparable services under sub. (7) (b) and who is eligible for and offered the  
8 home and community-based services under sub. (11) or s. 46.275, 46.277 ~~or~~, 46.278,  
9 or 46.2785, but who declines the offer, except that a county may use funds received  
10 under sub. (7) (b) to pay for long-term community support services for the person for  
11 a period of up to 90 days during which an application for services under sub. (11) or  
12 s. 46.275, 46.277 or, 46.278, or 46.2785 for the person is processed.

\*\*\*\*NOTE: Should eligibility for the Community Opportunities and Recovery  
Program make a person ineligible for COP?

✓ ***DHFS Response:*** *These people should be treated the same as other waiver individuals.  
COP funds can be used for non-MA eligible services.*

13 **SECTION 4.** 46.2785 of the statutes is created to read:

14 **46.2785 Community Opportunities and Recovery Program. (1)**

15 DEFINITIONS. In this section:

16 (a) "Nursing facility" has the meaning given in 42 USC 1396r (a).

17 (b) ~~"Physically disabled" has the meaning given in s. 46.27 (11) (a).~~

\*\*\*\*NOTE: Is this definition of "physically disabled" consistent with the intent of DHFS?

✓ ***DHFS Response:*** *Please see attached justification for striking s. 46.2785(1)(b), as well as  
repealing s. 46.27(11)(a) -- (per DHFS Office of Legal Counsel).*

18 (c) "Serious mental illness" has the meaning given in 42 CFR 483.102 (b) (1).

19 (d) "Waiver program" means the Community Opportunities and Recovery

20 Program for which a waiver has been requested under sub. (2) and granted under 42

21 USC 1396n (c).

1       (2) WAIVER REQUEST. The department may request a waiver from the secretary  
2 of the U.S. department of health and human services, under 42 USC 1396n (c),  
3 authorizing the department to serve in their communities medical assistance  
4 recipients who are physically disabled and have a serious mental illness by providing  
5 them home or community-based services as part of the Medical Assistance program.  
6 If the department requests a waiver, it shall include all the assurances required  
7 under 42 USC 1396n (c) (2) in the request. If the department receives a waiver, it  
8 may request an extension of the waiver under 42 USC 1396n (c).

9       (3) DEPARTMENTAL DUTIES. If the department receives a waiver under this  
10 program, it shall do all of the following:

11       (a) Fund the provision of home or community-based services that meet the  
12 requirements of this section.

13       (b) Establish an average annual per person rate of reimbursement to counties  
14 or agencies that participate in the waiver program.

15       (c) Unless a waiver is obtained under s. 49.45 (37), review and approve or  
16 disapprove each plan of care developed under sub. (4).

\*\*\*\*NOTE: Does DHFS want to specify any other departmental duties, for example annual reporting to DHHS?

***DHFS Response: The Department would prefer this section be removed since the Waiver will determine the departmental duties.***

17       (4) COUNTY PARTICIPATION. (a) Any county may participate in the waiver  
18 program if it meets the conditions specified in this subsection and any requirements  
19 specified by the department.

\*\*\*\*NOTE: I assumed that the waiver program will be open to all counties. Should DHFS be able to contract with a private agency to serve the residents of a county, even if the county wants to administer the waiver program? (i.e., how should I reconcile this subsection and sub. (5)?) Does DHFS want to specify which types of county agencies may administer the waiver program, as in s. 46.275 (3) (a)?

***DHFS Response: This language was originally used to facilitate the PACE program and should be removed. County participation will be handled administratively through state/county contracts and the waiver language.***

20       (b) A county participating in the waiver program shall develop a plan of care  
21 for each participant in the waiver program and shall provide each participant home

1 ~~and community-based services that are consistent with the participant's plan of~~  
2 ~~care.~~

\*\*\*\*NOTE: Should the bill specify any particular services such as case management or "recovery services" that a county must provide or will DHFS specify the required services absent statutory language?

***DHFS Response:*** *Again, this will be handled administratively and the department would prefer not to have specific language in the statutes.*

3 (c) ~~A county participating in the waiver program shall inform persons eligible~~  
4 ~~under sub. (6) that home and community-based services are available, at their~~  
5 ~~choosing, instead of care in a nursing facility.~~

\*\*\*\*NOTE: Should reductions in nursing home bed utilization as a result of the waiver result in delicensing of beds, and if so, should the bill require that counties submit a plan for delicensing as under s. 46.277 (3) (b)?

***DHFS Response:*** *No.*

6 (5) CONTRACT FOR SERVICES. Provided it is consistent with the federal waiver, tThe  
department may contract with a county or a  
7 private nonprofit agency to provide services under administer the waiver program. A private  
8 nonprofit agency with which the department contracts shall have the powers and  
9 duties of a county under this section.

\*\*\*\*NOTE: The language proposed by DHFS, which is modelled on the COP-Waiver language, provides that DHFS may contract with a county, a private nonprofit agency, or an aging unit. This bill does not use the COP-Waiver definition of private nonprofit agency under s. 46.27 (1) (bm). Does the department want to limit the type of private nonprofit agency with which the department may contract? Also, the bill does not provide for DHFS to contract with an aging unit, because an aging unit does not seem the appropriate county department to serve people who are mentally ill and developmentally disabled. Please let me know if the bill should allow DHFS to contract with an aging unit.

10 (6) ELIGIBILITY. Any medical assistance recipient who is ~~physically disabled,~~  
11 has a serious mental illness, ~~is living in a nursing facility,~~ and meets the level of care  
12 requirements under s. 49.45 (6m) (i) for reimbursement of nursing home care under  
13 the Medical Assistance program is eligible to participate in the waiver program.

\*\*\*\*NOTE: Does DHFS want to specify that either the MA recipient or a person acting on his or her behalf may apply for participation in the program, as in s. 46.275 (4) (a)? \*\*\*\*NOTE: Does DHFS want to include a provision on who reviews applications, and the standards for review as in s. 46.275 (4) (b)? \*\*\*\*NOTE: Will the number of waiver slots be capped statewide, and if so, does DHFS want language stating that a county may fill a slot, when a participant leaves the waiver program, as in s. 46.277 (4) (b)?

***DHFS Response:*** *Specific language is not needed for any of the notes above. The waiver slots do not need to be capped. The budget bill (and/or other legislative or administrative actions) will set the level of funding. Clients will be enrolled (i.e., "slots" will be used) to the extent funding is available.*

1 (7) FUNDING. (a) Medical assistance reimbursement for services a county or  
2 private nonprofit agency provides under the waiver program shall be made from the  
3 appropriation accounts under s. 20.435 (4) (b) and (o).

4 (b) The department may, from the appropriation account under s. 20.435 (4) (o),  
5 reimburse a county or private agency for providing services that cost more than the  
6 average annual per person rate established by the department, but less than the  
7 average amount approved by the federal government for the waiver program.

\*\*\*\*NOTE: Does DHFS want to include restrictions on the use of waiver funding? For example, may waiver funding be used to pay for placement at a CBRF? Should any of the restrictions under s. 46.275 (5) (b) apply?

\*\*\*\*NOTE: Does DHFS want to limit total funding to the counties for the waiver program to the amount approved by the federal government, as in s. 46.275 (5) (c)?

***DHFS Response: The restrictions will be handled administratively through state/county contracts and the waiver language. The total funding does not need language because the department will pay only what is federally permissible.***

8 (8) EFFECTIVE PERIOD. Except as provided under sub. (2), this section takes  
9 effect on the date approved by the secretary of the U.S. department of health and  
10 human services as the beginning date of the period of the waiver received under sub.  
11 (2). This section remains in effect for 3 years following that date and, if the secretary  
12 of the U.S. department of health and human services approves a waiver extension  
13 under 42 USC 1396n (c), for the duration of the extension.

14 SECTION 5. 46.286 (1) (a) 2. b. of the statutes is amended to read:

15 46.286 (1) (a) 2. b. Home and community-based waiver programs under 42  
16 USC 1396n (c), including community integration program Community Integration  
17 Program under s. 46.275, 46.277, or 46.278 and the Community Opportunities and  
18 Recovery Program under s. 46.2785.

\*\*\*\*NOTE: Should participation in the Community Opportunities and Recovery Program create entitlement to the Family Care benefit if Family Care is introduced in additional counties?

***DHFS Response: Participation in this waiver does not entitle a person to Family Care. However, a person may be receiving waiver services at the time that the Family Care benefit becomes available in a county and be grandfathered for Family Care functional eligibility if they otherwise do not have a level of care that meets Family Care functional eligibility. There may be such new Family Care counties in the future.***

19 **SECTION 6.** 46.985 (2) (a) 4. of the statutes is amended to read:  
2005 – 2006 Legislature

– 7 –

LRB-0311/P1  
RLR:kjf:jf  
**SECTION 6**

1 46.985 (2) (a) 4. Procedures for coordinating the family support program and  
2 the use of its funds, throughout this state and in each service area, with other  
3 publicly funded programs including the community options program under s. 46.27;  
4 the ~~community integration program~~ Community Integration Program under ss.  
5 46.275, 46.277, and 46.278; the Community Opportunity and Recovery Program  
6 under s. 46.2785; the social services, mental health, and developmental disabilities  
7 programs under ss. 46.495, 51.42, and 51.437; the independent living center program  
8 under s. 46.96; and the ~~medical assistance~~ Medical Assistance program under subch.  
9 IV of ch. 49.

10 **SECTION 7.** 49.46 (2) (b) 8. of the statutes is amended to read:

11 49.46 (2) (b) 8. Home or community-based services, if provided under s. 46.27  
12 (11), 46.275, 46.277 ~~or~~, 46.278, or 46.2785, under the family care benefit if a waiver  
13 is in effect under s. 46.281 (1) (c), or under a waiver requested under 2001 Wisconsin  
14 Act 16, section 9123 (16rs), or 2003 Wisconsin Act 33, section 9124 (8c).

15 **SECTION 8.** 108.02 (13) (k) of the statutes is amended to read:

16 108.02 (13) (k) "Employer" does not include a county department, ~~or~~ aging unit, or private  
agency (in the case of the COR Waiver)

17 that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal  
18 agent under s. 46.27 (5) (i) or 47.035 as to any individual performing services for a  
19 person receiving long-term support services under s. 46.27 (5) (b), 46.275, 46.277,  
20 46.278, 46.2785, 46.286 (note: appropriate Family Care reference), 46.495, 51.42, or 51.437 or  
personal assistance services under s.

21 47.02 (6) (c).

21

(END)



### **DDES Review Comment**

In reviewing Colorado's HCBW 1915 (c) waiver 5-year renewal application and related legislative language, DHFS discovered the following.

Colorado's eligibility described in State Stats Chapter 280 basically requires the person to have a primary diagnosis of major MI, be in need of level of care available in a NH, be eligible for MA, and the cost of services necessary to prevent NH placement not exceed the average cost of NH care.

This legislation (SB 93-246) gives the authority to implement a HCB services program for persons with major mental illness as provided by federal waiver. They do not refer to or define "physical disability". One reason might be that CMS allows each state to define "state-specific" differences in their nursing level of care/function. Linking legislative language to the LOC would seem to allow us more flexibility in the future should their be changes. If we don't reference "physical disability" we won't have to ask for a changes to the definition in s. 46.27 (11) (a) either.

### **OLC Review Comment**

Please see the attached Colorado statute. You are correct the waiver eligibility provisions do not require the person to have a physical disability. See section 26-4-673. Federal HCB waiver law, 42 USC s. 1396n(c) provides:

"The Secretary may by waiver provide that a State plan approved under this subchapter may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan."

[Emphasis added]

Federal law thus does not limit participation in HCB waivers to persons with any specific type of disability. The crucial eligibility standard is that the person must qualify for a level of institutional care that is MA reimbursable under the State plan.

Based on the above, we have revised the draft as follows:

--Delete definition of "physically disabled" in s. 46.2785(1)(b).

--Strike language "are physically disabled and" in s. 46.2785(2).

--Strike language "is physically disabled" in s. 46.2785(6).

As to the definition of "physical disability" in s. 46.27(11)(a), curiously that term is not used within the subsection. It doesn't need to be amended; the section should be repealed.

Please repeal s. 46.27 (11) (a) as follows:

~~(11) MEDICAL ASSISTANCE WAIVER. (a) In this subsection, "physically disabled" means having a condition that affects one's physical functioning by limiting mobility or the ability to see or hear, that is the result of injury, disease or congenital deficiency and that significantly interferes with or limits at least one major life activity and the performance of one's major personal or social roles.~~

## MA HCB WAIVER – MENTAL ILLNESS – COLORADO – STATUTES

26-4-671. Short title - citation.

This subpart 5 shall be comprised of sections 26-4-671 to 26-4-676 and may be cited as subpart 5. The title of this subpart 5 shall be known and may be cited as the "Home- and Community-based Services for Persons with Major Mental Illnesses Act".

26-4-672. Legislative declaration - no entitlement created.

(1) The general assembly hereby finds and declares that the purpose of this subpart 5 is to provide, under federal authorization and subject to available appropriations, home- and community-based services for persons with major mental illnesses.

(2) Nothing in this subpart 5 shall be construed to establish that eligible persons as defined in section 26-4-673 (1) are entitled to receive services from the department of health care policy and financing or the department of human services. The provision of any services pursuant to this subpart 5 shall be subject to federal waiver authorization and available appropriations.

26-4-673. Definitions.

As used in this subpart 5, unless the context otherwise requires:

(1) "Eligible person" means a person:

(a) Who has a primary diagnosis of major mental illness, as such term is defined in the diagnostic and statistical manual of mental disorders used by the mental health profession, and includes schizophrenic, paranoid, major affective, and schizoaffective disorders, and atypical psychosis, but does not include dementia, including alzheimer's disease or related disorders;

(b) Who is in need of the level of care available in a nursing facility;

(c) Who is categorically eligible for medical assistance, or whose gross income does not exceed three hundred percent of the current federal supplemental security income benefit level, and whose resources do not exceed the limit established for individuals receiving a mandatory minimum state supplementation of supplemental security income benefits or, in the case of a person who is married, do not exceed the amount authorized in section 26-4-506.

26-4-673.5. Cost of services.

Home- and community-based services for persons with major mental illnesses shall meet aggregate federal waiver budget neutrality requirements.

26-4-674. Relationship to single entry point for long-term care.

The home- and community-based services program for persons with major mental illnesses shall not be considered a publicly funded long-term care program for the purposes of sections 26-4-521 to 26-4-525, concerning the single entry point system, unless and until the departments of health care policy and financing and human services provide in the memorandum of understanding between the departments for the inclusion of the program in the single entry point system.

26-4-675. Implementation of program for mentally ill authorized - federal waiver - duties of the department of health care policy and financing and the department of human services.

(1) The state department is hereby authorized to seek any necessary waiver from the federal government to develop and implement a home- and community-based services program for persons with major mental illnesses. The program shall be designed to provide home- and community-based services to eligible persons. Eligibility may be limited to persons who meet the level of services provided in a nursing facility, and services for eligible persons may be established in medical services board rules to the extent such eligibility criteria and services are authorized or required by federal waiver.

(2) The department of health care policy and financing and the department of human services shall provide a system of reimbursement for services provided pursuant to this subpart 5 which encourages the most cost-effective provision of services.

(3) The department of health care policy and financing and the department of human services shall, subject to appropriation, use available federal, state, local, or private funds, including but not limited to medicaid funds available under Title XIX of the federal "Social Security Act", as amended, to carry out the purposes of this subpart 5.

(4) The department of health care policy and financing may include in the memorandum of understanding with the department of human services provisions that allow the department of human services to certify agencies as medicaid providers for the purposes of this subpart 5, to adopt fiscal and administrative procedures, to review plans of care, to recommend reimbursement rates, to make recommendations regarding the scope, duration, and content of programs and the eligibility of persons for specific services provided pursuant to this subpart 5, and to fulfill any other responsibilities necessary to implement this subpart 5. However, the provisions shall be consistent with the designation of the department of health care policy and financing as the single state agency in section 26-4-104.

(5) The executive director and the medical services board shall promulgate such rules and regulations regarding this subpart 5 as are necessary to fulfill the obligations of the department of health care policy and financing as the single state agency to administer medical assistance programs in accordance with Title XIX of the federal "Social Security Act", as amended.

(6) The department of human services shall promulgate such rules as are necessary to perform its function pursuant to this subpart 5. Such rules shall be promulgated in accordance with section 24-4-103, C.R.S., and shall be consistent with the rules of the executive director and the medical services board.

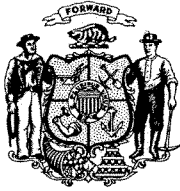
(7) In the event a direct conflict arises between the rules and regulations of the department of health care policy and financing promulgated pursuant to subsection (5) of this section and the rules and regulations of the department of human services promulgated pursuant to subsection (6) of this section, regarding implementation of this subpart 5, the rules and regulations of the department of health care policy and financing shall control.

26-4-676. Implementation of subpart contingent upon receipt of federal waiver.

(1) The implementation of this subpart 5 is conditioned upon the issuance of necessary waivers by the federal government and available appropriations. The provisions of this subpart 5 shall be implemented to the extent authorized by federal waiver. The state department shall propose legislation that conforms with the waiver provisions no later than the next regular legislative session following the issuance of the waiver.

(2) Provisions of this subpart 5 that are approved by the federal government and are authorized by federal waiver shall remain in effect only for so long as specified in the federal waiver, unless otherwise extended by the federal government. The state department shall provide

written notice to the revisor of statutes of the final termination date of the waiver, and this subpart 5 shall be repealed, effective July 1 of the year in which the waiver is terminated.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-0311/Pt 1

RLR:kjf:16

D-NOTE

UP: Please change request sheet. Thank you.  
DAK

DOA:.....Milioto, BB0018 - Community opportunities and recovery waiver

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen

1 AN ACT ...; relating to: the budget.

INSERT  
ANAL

*Analysis by the Legislative Reference Bureau*

~~This is a preliminary draft. An analysis will be provided in a later version.~~

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 46.10 (16) of the statutes is amended to read:  
3 46.10 (16) The department shall delegate to county departments under ss.  
4 51.42 and 51.437 or the local providers of care and services meeting the standards  
5 established by the department under s. 46.036, the responsibilities vested in the  
6 department under this section for collection of patient fees for services other than  
7 those provided at state facilities or those provided to children that are reimbursed  
8 under a waiver under s. 46.27 (11), 46.275, or, 46.278, or 46.2785 or a waiver  
9 requested under 2001 Wisconsin Act 16, section 9123 (16rs), or 2003 Wisconsin Act

1 33, section 9124 (8c), if the county departments or providers meet the conditions that  
2 the department determines are appropriate. The department may delegate to  
3 county departments under ss. 51.42 and 51.437 the responsibilities vested in the  
4 department under this section for collection of patient fees for services provided at  
5 the state facilities if the necessary conditions are met.

6 **SECTION 2.** 46.27 (5) (i) of the statutes is amended to read:

7 46.27 (5) (i) In the instances in which an individual who is provided long-term  
8 community support services under par. (b) for which the individual receives direct  
9 funding, serve directly as a fiscal agent or contract with a fiscal intermediary to serve  
10 as a fiscal agent for that individual for the purposes of performing the responsibilities  
11 and protecting the interests of the individual under the unemployment insurance  
12 law. The county department or aging unit may elect to act as a fiscal agent or contract  
13 with a fiscal intermediary to serve as a fiscal agent for an individual who is provided  
14 long-term support services under s. 46.275, 46.277, 46.278, 46.2785, 46.495, 51.42,  
15 or 51.437. The fiscal agent under this paragraph is responsible for remitting any  
16 federal unemployment compensation taxes or state unemployment insurance  
17 contributions owed by the individual, including any interest and penalties which are  
18 owed by the individual; for serving as the representative of the individual in any  
19 investigation, meeting, hearing or appeal involving ch. 108 or the federal  
20 unemployment tax act (26 USC 3301 to 3311) in which the individual is a party; and  
21 for receiving, reviewing, completing and returning all forms, reports and other  
22 documents required under ch. 108 or the federal unemployment tax act on behalf of  
23 the individual. An individual may make an informed, knowing and voluntary  
24 election to waive the right to a fiscal agent. The waiver may be as to all or any portion

1 of the fiscal agent's responsibilities. The waiver may be rescinded in whole or in part  
2 at any time.

3 **SECTION 3.** 46.27 (6r) (a) of the statutes is amended to read:

4 46.27 (6r) (a) A person who is initially eligible for services under sub. (7) (b),  
5 for whom home and community-based services are available under sub. (11) or s.  
6 46.275, 46.277 ~~or~~, 46.278, or 46.2785 that require less total expenditure of state funds  
7 than do comparable services under sub. (7) (b) and who is eligible for and offered the  
8 home and community-based services under sub. (11) or s. 46.275, 46.277 ~~or~~, 46.278,  
9 or 46.2785, but who declines the offer, except that a county may use funds received  
10 under sub. (7) (b) to pay for long-term community support services for the person for  
11 a period of up to 90 days during which an application for services under sub. (11) or  
12 s. 46.275, 46.277 ~~or~~, 46.278, or 46.2785 for the person is processed.

~~\*\*\*NOTE: Should eligibility for the Community Opportunities and Recovery  
Program make a person ineligible for COP?~~

INSERT  
3-12

13 **SECTION 4.** 46.2785 of the statutes is created to read:

14 **46.2785 Community Opportunities and Recovery Program. (1)**

15 DEFINITIONS. In this section:

16 (a) "Nursing facility" has the meaning given in 42 USC 1396r (a).

17 (b) "Physically disabled" has the meaning given in s. 46.27 (11) (a).

~~\*\*\*NOTE: Is this definition of "physically disabled" consistent with the intent of  
DHFS?~~

18 (c) "Serious mental illness" has the meaning given in 42 CFR 483.102 (b) (1).

19 (d) "Waiver program" means the Community Opportunities and Recovery  
20 Program for which a waiver has been requested under sub. (2) and granted under 42  
21 USC 1396n (c).



illnesses  
and meet level of care requirements  
specified in sub. (4)

(2) WAIVER REQUEST. The department may request a waiver from the secretary of the U.S. department of health and human services, under 42 USC 1396n (c), authorizing the department to serve in their communities medical assistance recipients who are physically disabled and have a serious mental illness by providing them home or community-based services as part of the Medical Assistance program. If the department requests a waiver, it shall include all the assurances required under 42 USC 1396n (c) (2) in the request. If the department receives a waiver, it may request an extension of the waiver under 42 USC 1396n (c).

(3) DEPARTMENTAL DUTIES. If the department receives a waiver under this program, it shall do all of the following:

(a) Fund the provision of home or community-based services that meet the requirements of this section.

(b) Establish an average annual per person rate of reimbursement to counties or agencies that participate in the waiver program.

(c) Unless a waiver is obtained under s. 49.45 (37), review and approve or disapprove each plan of care developed under sub. (4).

\*\*\*\*NOTE: Does DHFS want to specify any other departmental duties, for example annual reporting to the U.S. Dept. of Health and Human Services?

(4) COUNTY PARTICIPATION. (a) Any county may participate in the waiver program if it meets the conditions specified in this subsection and any requirements specified by the department.

\*\*\*\*NOTE: I assumed that the waiver program will be open to all counties. Should DHFS be able to contract with a private agency to serve the residents of a county, even if the county wants to administer the waiver program? (i.e., how should I reconcile this subsection and sub. (5)?) Does DHFS want to specify which types of county agencies may administer the waiver program, as in s. 46.275 (3) (a)?

(b) A county participating in the waiver program shall develop a plan of care for each participant in the waiver program and shall provide each participant home

1 and community-based services that are consistent with the participant's plan of  
2 care.

\*\*\*NOTE: Should the bill specify any particular services such as case management or "recovery services" that a county must provide or will DHFS specify the required services absent statutory language?

3 (c) A county participating in the waiver program shall inform persons eligible  
4 under sub. (6) that home and community-based services are available, at their  
5 choosing, instead of care in a nursing facility.

\*\*\*NOTE: Should reductions in nursing home bed utilization as a result of the waiver result in delicensing of beds, and if so, should the bill require that counties submit a plan for delicensing as under s. 46.277 (3) (b)?

6 (3) (5) CONTRACT FOR SERVICES. The department may contract with a county or a  
7 private nonprofit agency to provide services under the waiver program. A private  
8 nonprofit agency with which the department contracts shall have the powers and  
9 duties of a county under this section.

\*\*\*NOTE: The language proposed by DHFS, which is modelled on the COP-Waiver language, provides that DHFS may contract with a county, a private nonprofit agency, or an aging unit. This bill does not use the COP-Waiver definition of private nonprofit agency under s. 46.27 (1) (bm). Does the department want to limit the type of private nonprofit agency with which the department may contract? Also, the bill does not provide for DHFS to contract with an aging unit, because an aging unit does not seem the appropriate county department to serve people who are mentally ill and developmentally disabled. Please let me know if the bill should allow DHFS to contract with an aging unit.

By the waiver received by the department as specified in sub. (2) permits,

10 (4) (6) ELIGIBILITY. Any medical assistance recipient who is physically disabled,  
11 has a serious mental illness, is living in a nursing facility, and meets the level of care  
12 requirements under s. 49.45 (6m) (i) for reimbursement of nursing home care under  
13 the Medical Assistance program is eligible to participate in the waiver program.

\*\*\*NOTE: Does DHFS want to specify that either the MA recipient or a person acting on his or her behalf may apply for participation in the program, as in s. 46.275 (4) (a)?

\*\*\*NOTE: Does DHFS want to include a provision on who reviews applications, and the standards for review as in s. 46.275 (4) (b)?

\*\*\*NOTE: Will the number of waiver slots be capped statewide, and if so, does DHFS want language stating that a county may fill a slot, when a participant leaves the waiver program, as in s. 46.277 (4) (b)?

(5)  
1 (7) FUNDING. (a) Medical assistance reimbursement for services a county or  
2 private ~~nonprofit~~ agency provides under the waiver program shall be made from the  
3 appropriation accounts under s. 20.435 (4) (b) and (o).

4 (b) The department may, from the appropriation account under s. 20.435 (4) (o),  
5 reimburse a county or private agency for providing services that cost more than the  
6 average annual per person rate established by the department, but less than the  
7 average amount approved by the federal government for the waiver program.

\*\*\*NOTE: Does DHFS want to include restrictions on the use of waiver funding?  
For example, may waiver funding be used to pay for placement at a CBRF? Should any  
of the restrictions under s. 46.275 (5) (b) apply?

\*\*\*NOTE: Does DHFS want to limit total funding to the counties for the waiver  
program to the amount approved by the federal government, as in s. 46.275 (5) (c)?

8 (8) EFFECTIVE PERIOD. Except as provided under sub. (2), this section takes  
9 effect on the date approved by the secretary of the U.S. department of health and  
10 human services as the beginning date of the period of the waiver received under sub.  
11 (2). This section remains in effect for 3 years following that date and, if the secretary  
12 of the U.S. department of health and human services approves a waiver extension  
13 under 42 USC 1396n (c), for the duration of the extension.

14 SECTION 5. 46.286 (1) (a) 2. b. of the statutes is amended to read:

15 46.286 (1) (a) 2. b. Home and community-based waiver programs under 42  
16 USC 1396n (c), including ~~community integration program~~ Community Integration  
17 Program under s. 46.275, 46.277, or 46.278 and the Community Opportunities and  
18 Recovery Program under s. 46.2785.

\*\*\*NOTE: Should participation in the Community Opportunities and Recovery  
Program create entitlement to the Family Care benefit if Family Care is introduced in  
additional counties?

19 SECTION 6. 46.985 (2) (a) 4. of the statutes is amended to read:

1           46.985 (2) (a) 4. Procedures for coordinating the family support program and  
2           the use of its funds, throughout this state and in each service area, with other  
3           publicly funded programs including the community options program under s. 46.27;  
4           the ~~community integration program~~ Community Integration Program under ss.  
5           46.275, 46.277, and 46.278; the Community Opportunity and Recovery Program  
6           under s. 46.2785; the social services, mental health, and developmental disabilities  
7           programs under ss. 46.495, 51.42, and 51.437; the independent living center program  
8           under s. 46.96; and the ~~medical assistance~~ Medical Assistance program under subch.  
9           IV of ch. 49.

INSERT  
7-9

10           **SECTION 7.** 49.46 (2) (b) 8. of the statutes is amended to read:

11           49.46 (2) (b) 8. Home or community-based services, if provided under s. 46.27  
12           (11), 46.275, 46.277 ~~or~~, 46.278, or 46.2785, under the family care benefit if a waiver  
13           is in effect under s. 46.281 (1) (c), or under a waiver requested under 2001 Wisconsin  
14           Act 16, section 9123 (16rs), or 2003 Wisconsin Act 33, section 9124 (8c).

INSERT  
7-14

15           **SECTION 8.** 108.02 (13) (k) of the statutes is amended to read:

16           108.02 (13) (k) "Employer" does not include a county department or aging unit  
17           that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal  
18           agent under s. 46.27 (5) (i) or 47.035 as to any individual performing services for a  
19           person receiving long-term support services under s. 46.27 (5) (b), 46.275, 46.277,  
20           46.278, 46.2785, 46.495, 51.42, or 51.437 or personal assistance services under s.  
21           47.02 (6) (c).

22           (END)

D-NOTE

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0311/lins  
RLR:kjfjf

**INSERT ANAL**

Currently, DHFS administers several programs under waivers of federal Medicaid laws under which Medical Assistance (MA) recipients who reside in state centers for the developmentally disabled or other institutions or who meet certain levels of care requirements are relocated into their communities and provided home and community-based services and long-term care support services.

This bill authorizes DHFS to request, from the secretary of the U. S. Department of Health and Human Services, a waiver of federal Medicaid laws to provide home or community-based services to MA recipients who have serious mental illnesses and who meet certain level of care requirements for services in nursing homes. If DHFS receives the waiver, DHFS may, from general purpose revenues and federal Medicaid funds, contract with a county or a private agency to provide the home or community-based services under the Community Opportunities and Recovery Program created in the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

**INSERT 3-12**

**SECTION 1.** 46.27 (11) (a) of the statutes is repealed.

**INSERT 7-9**

**SECTION 2.** 49.46 (1) (a) 14. of the statutes is amended to read:

49.46 (1) (a) 14. Any person who would meet the financial and other eligibility requirements for home or community-based services under s. 46.27 (11) ~~or~~ 46.277, or 46.2785 but for the fact that the person engages in substantial gainful activity under 42 USC 1382c (a) (3), if a waiver under s. 49.45 (38) is in effect or federal law permits federal financial participation for medical assistance coverage of the person and if funding is available for the person under s. 46.27 (11) ~~or~~ 46.277, or 46.2785.

**History:** 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss. 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 245 ss. 10, 15; 1983 a. 538; 1985 a. 29, 120, 176, 253; 1987 a. 27, 307, 339, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1454d to 1460 and 2909g, 2909i; 1989 a. 122, 173, 333, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 99, 269, 277, 446, 450, 491; 1995 a. 27, 77, 164, 289, 303, 457; 1997 a. 27, 35, 105, 237; 1999 a. 9; 2001 a. 16; 2003 a. 33.

**INSERT 7-14**

**SECTION 3.** 49.47 (4) (as) 1. of the statutes is amended to read:

49.47 (4) (as) 1. The person would meet the financial and other eligibility requirements for home or community-based services under s. 46.27 (11) ~~or~~ 46.277,

CPS:  
no strike  
comma -  
just  
score  
it

✓  
1        or 46.2785 or under the family care benefit if a waiver is in effect under s. 46.281 (1)  
2        (c) but for the fact that the person engages in substantial gainful activity under 42  
3        USC 1382c (a) (3).

**History:** 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245; 1985 a. 29; 1987 a. 27, 307, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1462k to 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27; 1999 a. 9; 2001 a. 16.

4

5        **SECTION 4.** ~~49.47~~ (4) (as) 3. of the statutes is amended to read:

6        49.47 (4) (as) 3. Funding is available for the person under s. 46.27 (11) or,

7        46.277, or 46.2785 or under the family care benefit if a waiver is in effect under s.

8        46.281 (1) (c).

**History:** 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245; 1985 a. 29; 1987 a. 27, 307, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1462k to 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27; 1999 a. 9; 2001 a. 16.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0311/1dn  
RLR:kjf

*Date*

To Steve Milioto and Donna Dunkel:

I did not make the change in s. 46.2785 (3) (s. 46.2785 (5) under LRB-0311/P1) proposed by DHFS that would delete "provide services under the waiver program" and substitute "administer the waiver program." This change would have permitted DHFS to contract with a county or a private agency to administer the waiver program, but eliminated the authority for DHFS to contract with a county or private agency to provide services under the program. Under the waiver, wouldn't DHFS always administer the program (regardless of whether it contracts out for this administration)? And wouldn't a private agency or a county department be providing services? To make the proposed change would also be inconsistent with the title of s. 46.2785 (3) and the wording of s. 46.2785 (5) (a), for which DHFS did not propose change.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0311/1dn  
RLR:kjf:rs

November 22, 2004

To Steve Milioto and Donna Dunkel:

I did not make the change in s. 46.2785 (3) (s. 46.2785 (5) under LRB-0311/P1) proposed by DHFS that would delete "provide services under the waiver program" and substitute "administer the waiver program." This change would have permitted DHFS to contract with a county or a private agency to administer the waiver program, but eliminated the authority for DHFS to contract with a county or private agency to provide services under the program. Under the waiver, wouldn't DHFS always administer the program (regardless of whether it contracts out for this administration)? And wouldn't a private agency or a county department be providing services? To make the proposed change would also be inconsistent with the title of s. 46.2785 (3) and the wording of s. 46.2785 (5) (a), for which DHFS did not propose change.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.state.wi.us